

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

In the Matter of

Civil Citation No.72562

Robert M. Boston
Caron L. Boston
P. O. Box 817
Sparks, MD 21152

15314 Priceville Road

Respondents

FINDINGS OF FACT AND CONCLUSIONS OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Baltimore County Code Enforcement Hearing Officer on **February 24, 2010**, for a Hearing on a series of three Citations issued January 12, 2010 for violations: **(A)(1)** Actual dates of improvements unknown: either I.R.C. 2003 or 2006 section 105.1, section 109.4; Baltimore County Code (BCC) section 35-2-301, 35-2-304, 21-7-301 subtitle 3, failure to obtain electrical, building permits and call for required inspections. Installation of a masonry fireplace, electrical service, electrical equipment including but not limited to HVAC. **(A)(2)** 1996 BOCA section 3401.1 permit #B409158, failure to comply with permit for change of use (from barn to a barn with a tenant/office; Baltimore County Zoning Regulations (BCZR) section 1A01.3, for the utilization of two principal dwellings on a lot within a RC2 zone; **(A)(3)** Baltimore County Building Code (BCBC) 78-01, 2001 section 3112.2, no new building shall be constructed within a riverine floodplain, see permit #B540723, Zoning Case # 01-499X; (BCZR) section 102.1, 1A01.2 non-compliance with Zoning Commissioner's Order: operating a catering hall within a RC 2 zone, actual dates of illegal occupancy unknown-either 2003 or 2006 I.R.C., section R110.2; NFPA1 section 4.6.11, section 4.6.7, section 4.6.9.1 change in use certificate required.

This matter came before the Baltimore County Code Enforcement Hearing Officer on **April 28, 2010**, for a Hearing on a series of three Citations issued April 7, 2010 for violations: **(B)(1)** Actual dates of improvement unknown: either I.R.C. 2003 or 2006 section 105.1, 109.4; (BCC) section 35-2-301, 35-2-304, 21-7-301 subtitle 3, failure to obtain electrical, building permits and failure to call for required inspections. Installation of masonry fireplace, electrical service, electrical equipment including but not limited to HVAC; **(B)(2)** 1996 BOCA section 3401.1 Permit #B409158, failure to comply with permit for change of use (from a barn to a barn with a tenant/office); (BCZR) section 1A01.3, for the utilization of

two principal dwellings on a lot within a RC2 zone; **(B)(3)** Baltimore County Building Code (BCBC) section 78-01 2001 section 3112.2 No new building shall be constructed within a riverine floodplain; see Permit #B540723 Zoning Case 01-499X, (BCZR) section 102.1, 1A01.2, noncompliance with Zoning Commissioner Order: operating a catering hall within a RC2 zone; Actual dates of illegal occupancy unknown: either 2003 or 2006 I.R.C. section R110.2, NFPA1 section 4.6.11, 4.6.7, 4.6.9.1, change in use certificate is required on residential property known as 15314 Priceville Road, 21152.

On January 12, 2010 and April 7, 2010, pursuant to § 3-6-205, Baltimore County Code, Inspector James Garland issued Code Enforcement & Inspections Citations. The citations were sent to the Respondent by 1st class mail to the last known address listed in the Maryland State Tax Assessment files.

CIVIL PENALTIES PROPOSED

The **(A)(1)** citation proposed a civil penalty of \$86,000.00 (eighty six thousand dollars).

The **(A)(2)** citation proposed a civil penalty of \$32,400.00 (thirty two thousand four hundred dollars).

The **(A)(3)** citation proposed a civil penalty of \$86,000.00 (eighty six thousand dollars).

The **(B)(1)** citation proposed a civil penalty of \$12,600.00 (twelve thousand six hundred dollars).

The **(B)(2)** citation proposed a civil penalty of \$12,600.00 (twelve thousand six hundred dollars).

The **(B)(3)** citation proposed a civil penalty of \$12,600.00 (twelve thousand six hundred dollars).

The Respondent failed to request a Code Enforcement Hearing and/or failed to appear after requesting a Hearing. Baltimore County Code, § 3-6-205(d) provides that in case of failure to request a Code Enforcement Hearing or if the violator (Respondent) fails to appear after requesting a Hearing then the citation and the civil penalty, shall be the Final Order of the Code Official not subject to appeal.

After proper consideration of all the evidence presented, the Hearing Officer finds:

A. A Correction Notice was sent to Respondents in the form of a detailed three page letter dated September 24, 2009 from Baltimore County Building Engineer Donald E. Brand. These Citations were issued on January 12, 2010 and April 7, 2010. Photographs in the file show the January 12, 2010 Citations posted on the property mailbox post. After Respondents failed to respond and failed to appear for the prescheduled February 24, 2010 Hearing, this Hearing Officer directed the Department to make additional efforts to contact the property owners. The notices were again posted on the property; photographs in the file show them affixed to the property mailbox post. Copies of the notices were also mailed to the post office box listed in the State property tax files. Copies of the notices were mailed to other addresses found for Respondents in court and tax records, including a property in Garrett County. In any event, the posting of the notices on the property is sufficient service and notice to the property owners. BCC Section 3-6-203.

B. The subject property is a large property over 21 acres in size. When a prior owner, Renaissance LLC, applied in 2001 for a special exception to operate a riding stable, the Zoning Commissioner described the property as being improved with a two-story stone dwelling and several outbuildings, including a frame and stone barn occupied by a tenant farmer. By order dated August 13, 2001, the Zoning Commissioner granted the requested relief with conditions, ordering that no more than 11 horses could be boarded at any one time; coaching sessions were limited to 20 per week and could only be conducted during daylight hours; and none of the horses could be leased for trail riding. The Zoning Commissioner's Order further stated that "when applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order."

C. A Building Permit #B540723 was issued on January 13, 2004 for construction of a one story detached "pavillion" [sic] for use as a single family dwelling and riding arena.

D. Respondents Robert and Caron Boston purchased this property in April 2007. In 2008 and 2009, Baltimore County received complaints about unauthorized commercial and catered events being held at the property, and also received reports that additional construction and renovation had occurred without required permits. In December 2008, a Baltimore County Police Detective reported

that while at the property he observed a horse riding structure that “had been remodeled and converted into a catering hall. The interior of the structure had stamped concrete on the floor in the shape of hardwood planks and at the far end of the structure was an extremely large fire place. The fire place had a grand appearance and was at least 10-15 feet in width and five feet in height.” Photographs in the file show the remodeled building, with enclosed sides and vinyl windows. Photographs show multiple large space heaters installed, multiple electrical lights, and a large stone fireplace.

E. A Citation was previously issued on July 23, 2009 for failure to obtain a building permit for renovations. Testimony at the Hearing on that citation stated that the property was being advertised as a catering and event facility, showing pictures of an improved building. Respondents’ attorney presented a single Nonprofit Gathering Permit issued by Baltimore County for a March 7 event. The inspector testified that he did not enter the property due to a locked entry gate and was unable to verify if the advertised space was a building on the property that had been renovated without required permits. Hearing Officer Donald E. Brand issued a Final Order dated August 27, 2009 dismissing the case because there was no proof of the cited violation.

F. The Correction Notice issued on September 24, 2009 was in the form of a detailed three page letter dated September 24, 2009 from Baltimore County Building Engineer Donald E. Brand. The letter set forth several regulatory issues and requested correction of all code violations within 90 days or, alternatively, requested that the property owners call within two weeks and schedule a meeting with County officials to work out agreement on a restoration plan to correct all violations. The listed violations included: substantial modifications to the 17,640 square feet riding pavilion without required building and electrical permits; improper use of property for catering hall in violation of zoning regulations; improper use of riding stable violating restrictions ordered by Zoning Commissioner; improper change of occupancy with tenant’s apartment not needed for active agricultural use; construction of enclosed riding pavilion within 100-year riverine floodplain in violation of floodplain restrictions; failure to obtain required permits and inspections for sewage disposal system. The property owners failed to respond to the Correction Notice.

G. Citations (A)(1) and (B)(1) allege that modifications were made without required permits, to the riding pavilion that was originally constructed by prior owners under Building Permit B540723. As noted above in Paragraph D, the evidence shows that Respondents have constructed a masonry fireplace, enclosed the sides of the pavilion, and installed electrical equipment and heating equipment without obtaining any of the required building or electrical permits and without obtaining the required inspections. A Baltimore County building permit is required before a person may erect, construct, repair, alter, remodel, remove, or demolish a building or structure. BCC Section 35-2-301. Electrical installations must be done by a licensed electrician pursuant to a valid electrical permit, and the installations must pass County inspection. BCC Sections 21-7-302, 35-2-301, 35-2-304. The County Building Engineer notified Respondents by letter dated September 24, 2009 that the improvements made to the building exceeded what was allowed by the previously issued building permit, and that a new building permit was required. Citations (A)(1) and (B)(1) will be enforced.

H. Citations (A)(2) and (B)(2) allege that Respondents failed to comply with permit for change of use, from a barn to barn with tenant/office. The Correction Notice alleges more specifically that the approved accessory use of the barn and residence was predicated on the agricultural use of the property for stabling horses, and the need for an on-site tenant to care for the horses; and that there is evidence that Respondents have ceased this agricultural use and are using the property for a catering hall instead. Review of the file does not show evidence of use of this property for catered events other than the evidence that was presented at the prior hearing in August 2009. Review of the file also does not show evidence that there is currently a tenant residing in the barn/residence. Due to the lack of evidence to support these Citations, Citations (A)(2) and (B)(2) will be dismissed.

I. Citations (A)(3) and (B)(3) allege that a portion of the newly enclosed pavilion was constructed within the 100-year riverine floodplain, an area where new buildings and additions are restricted. The Building Engineer states in the September 24, 2009 letter, "a portion of the approved riding pavilion or riding stable was constructed within the 100-year riverine floodplain, an area where new buildings and additions are restricted. A color copy of an aerial view of the structure is enclosed delineating that portion within the 100 year flood zone, shown in blue. County law requires that the portion of the renovated riding stable within the 100 year floodplain be removed" Based on this statement from the Building Engineer, it appears that Respondents cannot obtain the required building

permit for this accessory building because the footprint extends into the riverine floodplain, unless they can obtain a waiver for the floodplain construction. See BCC 32-8-207, 32-8-301. This portion of Citations (A)(3) and (B)(3) will be enforced. Under the Baltimore County Code, the County has the authority to: "At the expense of the owner or agent of the owner, order the owner or agent to remove or repair a building, wall, structure or superstructure that ... is not erected, constructed, altered, extended, or repaired in compliance with the code and the regulations adopted under the code." BCC 35-2-203.

J. Citations (A)(3) and (B)(3) also allege that Respondents violated the Zoning Commissioner's Order by operating a catering hall within an R.C.2 zone and that Respondents improperly changed the use of the structure without a required change in use certificate. As noted above in Paragraph G, review of the file does not show evidence of use of this property for catered events other than the evidence that was presented at the prior hearing in August 2009. Operation of a catering hall, entertainment venue, or other public gathering space would violate the Zoning Commissioner's order and would require a zoning variance and a change in the use and occupancy permit for this property. However, due to the lack of evidence to support this portion of the Citations, this portion of the Citations will be dismissed.

K. Respondents have failed to respond to the County's notices regarding this property. Based on the evidence presented, it does not appear that active use is currently being made of the property – either for the riding stable business that was approved by the Zoning Commissioner in 2001 when the Special Exception was granted, or for the improper catering hall business that was alleged in 2009 and again alleged in the current Citation. The evidence shows clearly, however, that Respondents have improperly altered the horse riding ring pavilion without required building permits. They have enclosed the building, which turned it into an accessory building for purposes of zoning restrictions and violated those restrictions. They constructed a large masonry fireplace, and installed electrical and HVAC equipment without the required building and electrical permits and inspections. Despite multiple requests, Respondents have failed to make any attempt to correct these violations and to obtain permits and inspections, and have failed to offer any explanation or justification for their actions. The evidence also shows that the structure is partially located in the riverine floodplain, with no waiver obtained to allow the structure.

L. This Final Order will direct Respondents to EITHER obtain all required permits and inspections for the modified pavilion, in order to comply with code requirements prohibiting construction without required building permits and inspections and restricting construction in the riverine floodplain, OR remove the unauthorized construction from the pavilion and revise the pavilion to correct the encroachment on the riverine floodplain.

M. The Department has proposed a civil penalty based on alleged violations dating from December 2008 and from September 2009. The Correction Notice issued September 24, 2009 required correction within 90 days or, alternatively, contact within 2 weeks with County officials to work out a correction plan. This Order will enforce the Citations for construction without required building permit and construction in the floodplain from the end of that 90 day period to the dates of these Citations. Because compliance is the goal of code enforcement, the civil penalty will be reduced if the violations are corrected within the time provided below. Respondents are advised that if they do not correct the violations, they are subject to additional Citation for the ongoing violations.

IT IS ORDERED by the Code Enforcement Hearing Officer that a civil penalty be imposed in the amount of \$50,000.00 (fifty thousand dollars).

IT IS FURTHER ORDERED that the civil penalty will be REDUCED to \$5,000.00 (five thousand dollars) if the violations are corrected by July 1, 2010, EITHER by obtaining all required permits and inspections for the modified pavilion, OR by removing the unauthorized construction and electrical installations from the pavilion and by removing any part of the structure that encroaches in the riverine floodplain. PROVIDED FURTHER, if Respondents apply for building permits by June 10, 2010, the deadline for correction shall be extended to September 10, 2010.

IT IS FURTHER ORDERED that if not paid within thirty days of billing, the civil penalty, as authorized above, shall be imposed and placed as a lien upon the property.

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IT IS FURTHER ORDERED that the County inspect the property to determine whether the violations have been corrected.

ORDERED this 20th day of May 2010

Signed: ORIGINAL SIGNED
Margaret Z. Ferguson
Baltimore County Hearing Officer

MZF/jaf